

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MATTHEW FRENCH,

Defendant.

4:22-CR-3038

ORDER

The defendant has filed a motion to appoint counsel "to assist in pursuing a sentence modification, pursuant to 18 USC 3582(c)(2), the United States Sentencing Guideline (U.S.S.G.) Amendment 821, and the improper application of United States Sentencing Guideline (U.S.S.G.) 4B1.5(b)(1), previously imposed upon the Defendant." Filing 47. The defendant's motion will be denied.

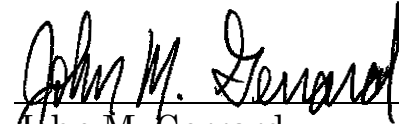
The record does not support a basis for the sentence modification the defendant is pursuing. U.S.S.G. § 4B1.5(b)(1) applies to the base offense level when "the defendant engaged in a pattern of activity involving prohibited sexual conduct." But no such pattern was identified in the presentence report, no such pattern was found by the Court at sentencing, and the presentence report didn't apply § 4B1.5(b)(1) in calculating the Guidelines range. *See* filing 43. Accordingly, there is no basis to appoint counsel.¹

¹ It's not clear to the Court whether the defendant's reference to U.S.S.G. § Amend. 821 was part of his claim regarding § 4B1.5(b)(1), or an independent basis for a sentence modification. But the Court notes that Amendment 821 doesn't apply to the defendant either, as he was neither a "zero-point" offender, nor did his criminal history calculation include any "status points." *See* filing 43.

IT IS ORDERED that the defendant's motion to appoint counsel (filing 47) is denied.

Dated this 11th day of April, 2024.

BY THE COURT:

A handwritten signature in black ink, appearing to read "John M. Gerrard", is written over a horizontal line.

John M. Gerrard
Senior United States District Judge